IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2165 OF 2006

Mrs. Neelu Mohan Khanchandani ..Petitioner
Vs.
The Divisional Joint Registrar
& ors. ..Respondents

Mr. B.G. Vaidya for petitioner.
Mr. K.B. Sonwalkar for respondent nos.3 and 7.

CORAM: B.H. MARLAPALLE, J.

Date : August 7, 2006.

P.C.:

1. Heard the learned counsel for the petitioner, who is aggrieved by the order dated 20/2/2006 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division thereby rejecting Revision Application No.525 of 2002 filed under Section 154 of the Maharashtra Co-operative Societies Act, 1960.

2. Flat No.405 situated in Om Shiv Shakti Co-operative Housing Society Ltd. was purchased by the petitioner from Shri Gopal Venkatesh Ganiga by registered sale deed dated 10th July 2001. However, the Special Recovery Officer attached to the respondent no.2-Society issued the certificate under

Section 101 of the said Act and attachment notice was issued in respect of the said flat pursuant to the loan obtained by Shri Gopal Venkatesh Ganiga (respondent no.3) from the respondent no.2-Credit Co-operative Society. The petitioner, therefore, challenged the recovery certificate as well as the attachment notice in the above referred revision application.

3. On hearing all the parties and examining the record as placed before him, the Divisional Joint Registrar noted that prior to the registration of the sale deed between the petitioner and respondent no.3, the suit flat was mortgaged by way of an agreement registered on 27/4/2001 by the respondent no.3 in favour of respondent no.2 when he has obtained loan from the said Co-operative Credit Society and, therefore, the mortgage being prior in time of the conveyance registered between the petitioner and respondent no.3, the attachment notice could not be faulted with and in any case under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961, the petitioner had an alternative remedy to approach to

the Special Recovery Officer and file her say. The learned counsel for the petitioner states that though the sale deed was registered on 7/7/2001 or 10/7/2001, the sale deed, in fact, was signed between the petitioner and respondent no.3 on 23/12/2000 and, therefore, the sale deed registered has to be taken as the transaction which is taken place on 23/12/2000 i.e. prior to the mortgage of the suit flat by respondent no.3 in favour of respondent no.2. This submission cannot be accepted for the simple reason that in the sale deed registered on 7/10th July 2001, there is no mention of the earlier sale deed dated 23/12/2000 and, therefore, the said sale deed cannot be linked or connected with the sale deed registered.

4. Under the circumstances, no fault could be found with the view taken by the Divisional Joint Registrar and, therefore, there is no case made out to cause interference in this petition under Article 227 of the Constitution in the impugned order.

5. Petition is rejected summarily.

(B.H. Marlapalle,J.)